

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

SHAD EL FERNANDEZ,

Plaintiff,

v.

BOSTON PROPERTIES, INC.,

BOSTON PROPERTIES, LP,

BOSTON PROPERTIES, LLC,

BOSTON PROPERTIES SERVICES, LLC,

AND BP KINGSTOWNE THEATRE, LLC,

Defendants.

**Civil Action No. 1:21-cv-00450**

Circuit Court for the County of  
Fairfax, Virginia  
Case No. CL-2021-0004043

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendants Boston Properties, Inc. (“BPI”), Boston Properties, LP (“BP, LP”), Boston Properties, LLC (“BP, LLC”), Boston Properties Services, LLC (“BP Services”) and BP Kingstowne Theatre, LLC (“BP Kingstowne”) (collectively, as “Defendants”), by counsel, respectfully file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, to remove to the United States District Court for the Eastern District of Virginia an action initiated against them in the Circuit Court for the County of Fairfax, Virginia. Removal of this action is based on the following:

1. On March 18, 2021, Plaintiff Shad El Fernandez filed a civil action against Defendants in the Circuit Court for the County of Fairfax, Virginia, case number CL-2021-0004043 (hereinafter “State Court Action”). In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders served upon Defendants in the State Court

Action is attached to this Notice of Removal as **Exhibit A** and incorporated herein by reference.

2. The Complaint in the State Court Action asserts negligence claims against Defendants arising from a trip-and-fall accident at 5910 Kingstowne Towne Center, Alexandria, Virginia. (Ex. A, Compl.)

3. Defendants were first served with process and the Complaint in the State Court Action on March 24, 2021. This Notice of Removal is timely because it is filed within thirty (30) days of Boston Properties' receipt of service of process and the Complaint in the State Court Action. 28 U.S.C. § 1446(b).

4. The Eastern District of Virginia, Alexandria Division, is the federal district embracing Fairfax County, Virginia, where the State Court Action was originally filed. 28 U.S.C. § 127(a). Thus, venue is proper in this District. 28 U.S.C. § 1441(a).

#### **BASIS FOR REMOVAL – DIVERSITY JURISDICTION**

5. The State Court Action is removable under 28 U.S.C. § 1332(a). The Court has subject matter jurisdiction over the State Court Action because it is between citizens of different states and the amount in controversy exceeds \$75,000.00 and arises under the laws of the United States. 28 U.S.C. §1332(a).

6. A corporation is a citizen of its state of incorporation and the state where its principal place of business is located. 28 U.S.C. § 1332(c)(1). A limited-liability company has the citizenship of each state where its members are citizens. Gen. Tech. Applications, Inc. v. Exro Ltda, 388 F.3d 114, 121 (4th Cir. 2004). An unincorporated legal entity, such as a partnership, is a citizen of every state in which any of its members are citizens. Carden v. Arkoma Associates, 494 U.S. 185, 195-96 (1990). For cases removed based on diversity jurisdiction, diversity is measured both when the state-court action is commenced, and when the

state-court action is removed. Rowland v. Patterson, 882 F.2d 97, 99 (4th Cir. 1989) (en banc) (explaining that “diversity must have existed both at the time the action was originally commenced in state court and at the time of filing the petition for removal” (citing 14A Charles A. Wright et al., Federal Practice and Procedure § 3723, at 311–14 (1985))).

7. BPI is now, and was at the time of the filing of the Complaint, a corporation organized under the laws of Delaware with its principal place of business in Massachusetts. Thus, it is a citizen of Delaware and Massachusetts for the purpose of diversity jurisdiction.

8. BP, LP’s sole general partner is BPI. Thus, BP, LP has the same citizenship as BPI for diversity citizenship. BP, LP is a citizen of Delaware and Massachusetts.

9. BP, LLC’s members are BP, LP and BPI. Thus, BP, LLC has the same citizenship as BP, LP and BPI for diversity citizenship. BP, LLC is a citizen of Delaware and Massachusetts. Further, it is denied that BP, LLC owned, operated or maintained the subject property at the time of the incident, and thus is an improper party to this action.

10. BP Services’ sole member is BP, LP. Thus, BP, Services has the same citizenship as BP, LP for diversity citizenship. BP Services is a citizen of Delaware and Massachusetts. It is denied that BP Services owned, operated or maintained the subject property at the time of the incident, and thus is an improper party to this action.

11. BP Kingstowne’s sole member is BP, LP. Thus, BP Kingstowne has the same citizenship as BP, LP for diversity citizenship. BP Kingstowne is a citizen of Delaware and Massachusetts.

12. On information and belief, plaintiff is now, and was at the time of the filing of the Complaint, a citizen of the State of Arizona.

13. In view of the allegations in plaintiff's Complaint, Defendants are informed and believe that the amount in controversy in this case, exclusive of interest and costs, exceeds \$75,000.00 and thus satisfies the amount in controversy specified in 28 U.S.C. § 1332(a). Plaintiff's Complaint requests judgment against all defendants in the amount of \$6,950,000.00. (Ex. A, Compl.)

14. If any question arises regarding the propriety of the removal of this action, Defendants respectfully request the opportunity to conduct jurisdictional discovery (if necessary), file a brief, and present oral argument to confirm that this Court has jurisdiction and that this case has been properly removed.

NOTICE

15. In accordance with 28 U.S.C. § 1446(d), prompt written notice of the filing of this Notice of Removal is being given to all other parties, and a true and correct copy of the Notice of Removal is being filed with the Circuit Court for the County of Fairfax, Virginia.

CONSENT

16. All Defendants consent to the removal of this action.

WHEREFORE, Defendants, by counsel, respectfully pray that the State Court Action be removed from the Circuit Court for the County of Fairfax, Virginia, to the United States District Court for the Eastern District of Virginia, in accordance with 28 U.S.C. § 1441, and for such further legal, equitable, or other relief that the Court deems just and proper.

This the 13<sup>th</sup> day of April, 2021.

Respectfully submitted,

**BOSTON PROPERTIES, INC.  
BOSTON PROPERTIES, LP,  
BOSTON PROPERTIES, LLC,  
BOSTON PROPERTIES SERVICES, LLC,**

**AND BP KINGSTOWNE THEATRE, LLC,**

By: /s/ \_\_\_\_\_  
Of Counsel

Joseph P. Moriarty (VSB No. 68465)  
Paris H. Thompson, III (VSB No. 93809)  
WILLCOX & SAVAGE, P.C.  
Wells Fargo Center  
440 Monticello Avenue, Suite 2200  
Norfolk, Virginia 23510-2243  
Telephone: (757) 628-5500  
Facsimile: (757) 628-5566  
[jmoriarty@wilsav.com](mailto:jmoriarty@wilsav.com)  
[pthompson@wilsav.com](mailto:pthompson@wilsav.com)  
*Counsel for Defendants,  
Boston Properties, Inc., Boston Properties, LP,  
Boston Properties, LLC, Boston Properties Services, LLC  
and BP Kingstowne Theatre, LLC*

**CERTIFICATION**

I hereby certify that the on this 13<sup>th</sup> day of April, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all counsel of record:

Robert J. Stoney, Esq. (VSB No. 27412)  
Juli M. Porto, Esq. (VSB No. 80820)  
Blankingship & Keith, PC  
4020 University Drive, Suite 300  
Fairfax, Virginia 22030  
Telephone: 703-691-1235  
Facsimile: 703-691-3913  
E-Mail: [rstoney@bklawva.com](mailto:rstoney@bklawva.com)  
[jporto@bklawva.com](mailto:jporto@bklawva.com)  
*Counsel for Plaintiff*

/s/  
\_\_\_\_\_  
Joseph P. Moriarty (VSB No. 68465)  
Paris H. Thompson, III (VSB No. 93809)  
WILLCOX & SAVAGE, P.C.  
Wells Fargo Center  
440 Monticello Avenue, Suite 2200  
Norfolk, Virginia 23510-2243  
Telephone: (757) 628-5500  
Facsimile: (757) 628-5566  
[jmoriarty@wilsav.com](mailto:jmoriarty@wilsav.com)  
[pthompson@wilsav.com](mailto:pthompson@wilsav.com)  
*Counsel for Defendants,*  
*Boston Properties, Inc., Boston Properties, LP,*  
*Boston Properties, LLC, Boston Properties*  
*Services, LLC and BP Kingstowne Theatre, LLC*